



Economic Impact Analysis Virginia Department of Planning and Budget

4 VAC 25-130 – Coal Surface Mining Reclamation Regulations Department of Mines, Minerals and Energy April 28, 2006

Summary of the Proposed Regulation

The Department of Mines, Minerals and Energy (DMME) proposes to amend its Coal Surface Mining Reclamation Regulations to:

- Update all obsolete references to the Code of Virginia,
- Maintain consistency, as required by state law, with amended federal regulations and
- Increase civil penalties for violations of the Virginia Coal Surface Mining Control and Reclamation Act that result in personal injury or fatality.

Result of Analysis

The benefits likely exceed the costs for these proposed regulatory changes.

Estimated Economic Impact

Current regulation mirrors older federal regulations that required mining companies, as a part of any permit process, to survey noncommercial buildings and residences to identify any areas that might be adversely impacted by mining activities. In 1999, a federal appeals court ruled that the Federal Office of Surface Mining (FOSM) could not require mining companies to survey private property over which the mining companies had no control; FOSM subsequently suspended enforcement of this rule.

In response to this federal action, DMME also suspended enforcement of the portion of its regulations that mirrored this requirement. This proposed regulatory action will entirely remove the language that had required these surveys. DMME estimates that, on average, these surveys added approximately \$1,000 to the cost of applying for a mining permit. Since suspension of this rule, mining companies have been able to save this cost each time they applied

for a permit to open a new mine. Adding clarity to this regulation by removing the now irrelevant language will benefit the citizens of the Commonwealth, but any monetary savings attached to this regulatory change were realized some time ago when enforcement was suspended.

Under current regulation, DMME can issue, along with a cessation order or notice of (rule) violation, a fine of up to \$5,000. In 2005, the General Assembly passed a law (Chapter 3, 2005 Acts of Assembly) that raised the maximum fine that DMME could levy to \$70,000. The new fine limit, however, only applies to rule violations that result in injury or death.

This proposed regulation will implement that legislative change. Although mining companies will now be subject to potentially much larger fines, DMME reports that mining companies have an extremely good safety history and, so, the cost of this regulatory change for companies should be minimal. In any case the benefit accrued to the public, since larger fines should provide a larger incentive for mining companies to be mindful of safety, likely outweighs the potential costs for mining companies.

Businesses and Entities Affected

There are 70 active surface coal mines and 150 active underground coal mines in the Commonwealth. The community that will be affected by this regulatory change comprises the companies that own these mines and all individuals who work for these companies as well as residents and businesses located near mining operations.

Localities Particularly Affected

According to DMME, this proposed regulation will primarily affect counties, such as Buchanan, Dickenson, Wise, Lee, Tazewell, Russell, and Scott Counties, where there are currently operating mines.

Projected Impact on Employment

This proposed regulation will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property

Under the proposed regulation, mining companies will no longer be required to complete a survey of “the condition of all noncommercial buildings or occupied residential dwellings, and

structures related thereto, that may be materially damaged...”. This change will allow mining companies to save approximately \$1000 at the onset of any new mining activity.

Small Businesses: Costs and Other Effects

None of the mining companies that will be directly affected by this proposed regulation are small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact

None of the mining companies that will be directly affected by this proposed regulation are small businesses.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB’s best estimate of these economic impacts.